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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

New Fast-Track
Authorizations for
Very Small Output Power
Rural TV Translators

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MM Docket No. _____

To: The Commission

PETITION FOR RULE MAKING

NATIONAL TRANSLATOR ASSOCIATION

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SUMMARY

The National Translator Association, a non-profit volunteer organization dedicated to universal free over-the-air television delivery for all the people of the United States, asks the Commission to initiate rule making, looking to the creation of new Fast-Track authorization procedures for conventional TV translators. To be eligible for Fast-Track, an applicant would propose no more than one watt (VHF) or ten watts (UHF) of transmitter power, and would need to certify that its location was not served by more than three commercial full service TV stations. Once a Fast-Track applicant self-certified to a simple checklist, and provided no petition or competing application was filed, a routine grant would result within 60 days of the filing.

This procedure is needed because TV translator operators, and the communities that depend on them for local television, have been unable to have applications processed in a routine manner, at most times since 1980. There has been no filing window for new applications in four years, or for major changes, in two years. Recently, the Commission froze all applications for broadcasting, while it devises rules for use of lotteries to resolve contested cases; yet rural TV translator applications rarely are contested.

The locations served by TV translators have been unable to keep pace with the continuing growth of TV broadcasting, and the proliferation of new programming. In the near future, the translator communities will have their hands full devising means to avoid lost service, from the coming Digital Television transition, and the reallocation of Channels 60 to 69. One-watt and ten-watt facilities will not provide community-wide coverage in many instances. Nevertheless the proposed "Fast-Track" could be an important tool for addressing many long deferred service needs, and cushioning the impact of sweeping changes that impend.

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To: The Commission

The National Translator Association ("NTA," "Association" or "Petitioner"), by its attorney, here respectfully requests that the Commission (or "FCC") adopt a Notice of Proposed Rule Making, looking to the adoption of new Fast-Track authorization procedures for conventional TV translators, employing minimal levels of transmitter output power (one watt in the VHF band, and ten watts in the UHF band). Such facilities would be authorized only in rural areas receiving three or fewer signals from full service commercial television broadcast stations licensed under Part 73 of the Commission's Rules and Regulations, 47 U.S.C. §73.601 et seq. Once an applicant submits sworn self-certifications on a prescribed checklist, and gives public notice of the filing to all persons potentially affected, an uncontested filing would result in an automatic construction permit within a brief, prescribed time line. This new authorization procedure would enable the rural residents themselves to restore and, in some areas, enhance established translator service delivery, but would not be seen as broadly affecting a television industry structure that already is experiencing remarkable changes. This petition for rule making is filed pursuant to §1.401 of the Rules.

NTA is a non-profit volunteer organization dedicated to the preservation of free, over-the-air television for all the people of the United States. NTA membership is composed of organizations and individuals who are TV and FM translator licensees, persons who install and maintain translators, and full service TV broadcasters who benefit from the extended service provided by

translators. Predominantly, but not exclusively, NTA membership is concentrated West of the Mississippi River.

Television is a regulated industry, and a dynamic one. In the nearly two decades since the FCC announced the Low Power Television initiative in 1980, we have witnessed major changes in the regulatory approach to television. These changes have been designed to deliver important public benefits, and to a large degree they have done this, and will in the future.

Too often, however, the rural residents who depend upon TV translators for television delivery to the home have not had their needs included in adoption of nation-wide plans and policies. As a result, a pattern is emerging where areas enjoying multi-channel TV service, including broadcast and cable, have seen their choices expand, with the exciting promise of new services in store in the future. The enhancement of rural service has been blocked, and communities served by TV translators have been falling further behind.

Petitioner respectfully submits that in major part, this negative trend reflects a regulatory failure. For most of the past two decades the FCC has strictly limited, and in the past four years it has forbidden new TV translator filings. Many rural areas remain dependent on translators, but equipment changes, upgrades, and new broadcast channels -- all of them practical and affordable, with no threat of objectionable interference -- have been deferred or not permitted. With the impending transition to Digital Television, and the reallocation of portions of the

broadcast band, this trend is accelerating, and the adverse impact is deepening.

This Nation is in danger of creating a two-tier television broadcast system, one tier composed of perhaps 95 per cent of the public in homes passed by cable or reachable by multi-channel broadcast; the other tier, perhaps five per cent of homes, consigned to a handful of channels, or fewer, unless a household has the means to purchase television reception, delivered by space satellites. Even the rural satellite home is dependent on TV translators for any local service. The Commission's charge from Congress is clear, to "make available" "communication service with adequate facilities" "so far as possible, to all the people of the United States. . . ." 47 U.S.C. §151. NTA respectfully submits that, in television broadcasting for rural areas, we see a glaring regulatory omission.

NTA here proposes a new Fast-Track authorization process, to address this growing disparity. The eligible service area is limited to rural places that demonstrably are underserved. The proposed service rules, similarly, are crafted as the minimum necessary to afford some meaningful relief, without the threat of any disruption to important national goals for television that the Agency needs to pursue unimpaired.

In the following, we present: (I) A description of the crucial role TV translators provide in assuring that rural citizens are able to partake of free, over-the-air broadcast service; (II) How we arrived at the present impasse in translator

authorizations, and the likelihood that conditions may worsen in the future, without the relief sought here; and (III) Procedures for Fast-Track authorization. Naturally, all these rules if proposed would be subject to refinement, through notice-and-comment rule making proceedings.

I. IN RURAL AREAS, TV TRANSLATORS PROVIDE VITAL, LIFE LINE SERVICES TO COMMUNITIES HAVING NO REALISTIC ALTERNATIVES FOR LOCAL TV DELIVERY.

Television translators are devices, usually located at a hilltop or other strategic site, that receive a distant signal and convert it instantly for local output and home reception on a different channel. TV boosters amplify the incoming signal on the same channel, for instant retransmission. Boosters and translators arose during the 1950's as a local self-help solution, in areas where terrain and sparse population precluded full service TV development and reception. Community Antenna TV was an alternative distribution mode that grew up in the same historic era, initially without government regulation, but typically involving greater capital expense than translators, owing to the need to install trunk lines and drop lines.

When the FCC's 1952 allotment plan was new, the Agency erroneously believed that translator operations would interfere with the orderly fill-in of the initial, 1952 table, and attempted to criminalize translator operations.¹ Translators first were

¹ Report and Recommendations in the Low Power Television Inquiry, BC Docket No. 78-253, September 9, 1980 ("LPTV Staff Report." ¶15-29.

authorized to Channels 70-83 only, initially at ten-watt transmitter power (1956), and then, with Congressional insistence, to Channels 2-13, limited to one watt (1960)². With the reallocation of Channels 70-83 in 1970, UHF translators were directed to migrate to Channels 14-69. Until 1982, a former rule required that translators select a channel from 55 to 69, unless a special showing could be made that this was impractical (former §74.702(d))³.

Despite the highly restrictive power limits and a further limitation on fund raising, sponsorship or other local origination to 20 seconds per hour (later, 30 seconds), TV translator service grew steadily. Today in remote, rural communities, translators often provide the only TV service to places that both full service TV and Cable TV have deemed impractical to serve. These translator systems are supported through donations, volunteer labor, or specialized TV tax districts and county governments. A very few are able to sell local ad insertions or have implemented STV features. In many counties, these facilities are the only source of regional news and public affairs, weather and crop information, sports and entertainment fare. Systems that have

² Pub. L. 86-609, 74 Stat. 373, see LPTV Staff Report, ¶¶30-33; Kenneth A. Cox, "The Problem of Television Service for Smaller Communities," Staff Report Prepared for the Senate Committee on Interstate and Foreign Commerce," December 26, 1958.

³ Low Power Television Broadcasting, Notice of Proposed Rule Making in BC Docket No. 78-253, 82 FCC 2d 47 (1980), ¶49. Ironically, operators who have complied with that rule in good faith now are those experiencing the greatest hardship from the reallocation of Channels 60-69.

added a channel with LPTV features are required to, and do provide their own Emergency Alert System participation.

The FCC has licensed 2,256 VHF translators and 2,721 UHF translators, or 4,977 total.⁴ A typical translator community is served by a multi-channel array from a single site, that includes three, five, perhaps seven channels. Multi-channel systems, even when they have been able to add translators, generally have not been able to keep pace with the proliferating urban independents and affiliates of new TV networks.

By way of illustration, lifeline TV services are provided to rural counties in the following states, each of which has more than 300 licensed TV translators: Alaska (N=645), California (725), Arizona (337), New Mexico (361), Texas (631), Colorado (694), Utah (694), Idaho (329), Montana (434), Nevada (359), Oregon (479), Washington (300), and Minnesota (324). Nation-wide, the population served by rural TV translators easily could surpass a million households, or more than two million persons, all of whom have no alternative access to free, over-the-air television.

The regulatory treatment of TV translators differs from the treatment of LPTV stations only in minor respects. A translator may upgrade to incorporate originating LPTV features by a simple notification.⁵ Both are "secondary" services in two senses of the word. They must yield right-of-way to identified primary users

⁴ All data as of November 30, 1997, "Broadcast Station Totals," FCC News Release, December 16, 1997.

⁵ Sec. 74.732(e) of the Rules and Regulations.

licensed to the same frequencies. They also must not cause objectionable interference to any primary service and, should interference be detected, they must correct the condition at their own expense or cease operations.⁶ With nearly 5,000 licensed translators, and 2,031 licensed LPTV stations, it is a point of pride with these services that complaints to the Commission of interference are rare. The FCC's decision to graft LPTV onto the traditional TV translator service has had fateful consequences, not all of them foreseen, as the desirability of urban LPTV authorizations repeatedly overtaxed the Commission's application processing line. The proposed Fast-Track authorization is a measured step away from this impasse, hopefully enabling TV translators to address backlogged service needs in the rural areas of greatest unmet demand.

II. TV TRANSLATOR SERVICE NEEDS HAVE BECOME BACKLOGGED. EVEN MORE SERIOUS PROBLEMS IMPEND.

A. THE COMMISSION'S LPTV INITIATIVE CREATED A SIZEABLE BACKLOG OF UNFILLED RURAL TV SERVICE NEEDS.

The Commission's Low Power Television initiative liberalized power limits, abolished arbitrary channel priorities within the full spectrum of Channels 2 through 69, and authorized origination from diverse sources. But the unintended by-product was a substantial -- and continuing -- disruption to the Commission's processing of traditional translator applications. The Notice of Proposed Rule Making, on September 9, 1980, supra, elected not to

⁶ Sec. 74.703 of the Rules.

impose a freeze on translator filings, including those seeking low power features on an ad hoc waiver basis. The FCC recognized that, given the interest sparked by the initiative, filings could not be limited to translators alone. By not imposing a freeze, the Agency also was endeavoring to protect traditional translator operations. "Certainly, the routine uncontested translator application should continue to be processed." Notice, ¶78.

However, from the date of the Notice until the cut-off date of March 31, 1981, some 5,000 new applications poured into the Secretary. A total filing freeze was imposed on April 9, 1981.⁷ It took the staff approximately five years to work through this backlog. In those years, TV translator operators could obtain no authorizations -- no new channel changes, no upgrades, no engineering corrections. Since 1981, Commission policy has been a total freeze on new and major change TV translator applications. Window filing periods were devised, as occasional exceptions to the general freeze, which continues in effect to this date unless a new window is announced.

NTA submits that ad hoc window filing opportunities were devised primarily to meet considerations of staff workload, and could not be reconciled with one of the central goals of the regulatory body, to promote the larger and more effective use of radio and television. In an era where increasing attention is given to leaving resource distribution to the market, this policy

⁷ The Order Imposing Freeze was thereafter published in the Federal Register, 46 FR 26062, May 11, 1981.

has ill served the public interest.

Windows have not been announced on an orderly schedule, but came as and when limited staff got caught up with backlogs. Meanwhile, the freeze precluded the Commission from having any idea of the magnitude of services desired but not deliverable, through lack of a filing opportunity. Even as a rationing system for administrative resources, the episodic windows have proved inefficient, because changes to the evolving primary services have resulted in numerous requests for Special Temporary Authorization (setting forth what would have been changes by formal application, had any applications been permitted). STA's then require special handling by the staff.

NTA acknowledges that the freeze and windows system was installed to address a real problem -- wave upon wave of speculative filings, at times in the hundreds by a single filer or application mill, often with slipshod clearance of sites or other engineering flaws, and in circumstances where the *bona fide* intention to construct was deeply suspect. But in 1987, the Commission began to impose a modest filing fee on commercial LPTV and TV translator applicants⁸, and with that single step, the worst abusers, thankfully, moved along to other pursuits.

The window system continued unabated, however, with a restriction to a total of five applications per window. The last opportunity for filing new translator applications was the window

⁸ Fee Collection Program, FCC 86-562, 62 RR 2d 303 (1986), rules effective 4/1/87, 52 F.R. 5285.

period in April, 1994, nearly four years ago. With Digital Television on the near horizon, the FCC decided not to entertain new TV translator applications, and a window period for major changes, only, in April/May of 1996, represented the last chance for any TV translator filings since, and it appears for a very long time into the future.

TV translator operators have used the limited window opportunities to solve as many problems as could be solved with each window, but backlogged service needs continued to grow. Rural applications rarely are contested, and so have been eligible to proceed from window filing, after a long wait in pending status of one-and-a-half to two years⁹, to proposed grant list, finally to grant of the construction permit.¹⁰

Since the 1981 freeze was imposed, Fox has become a full-fledged fourth network. UPN and WB started networks in 1995, after the most recent window for new translator filings. In the

⁹ A conceptually simple computer program, using desired-to-undesired signal strength comparisons, is employed to determine acceptance of applications, Sec. 74.705(d) of the Rules; and with new DTV spacings, see new §74.806. In practice, however, many applications in mountainous areas, where there is no realistic possibility of interference, entail the submission of terrain shielding waiver requests (Sec. 74.705(e)), the processing of which further taxes the limited staff. Even clean, uncontested applications meeting all criteria have been taking up to 24 months to process.

¹⁰ Displacement relief has remained available, under §73.3572(a)(2) of the Rules. Where a showing is made of impending destruction of existing service, a TV translator channel change or other change is treated as "minor" unless a conflicting application is filed. In many instances, however, a displacement "fix" does not result in full replication of the lost service, because of the complexities involved in re-engineering.

past ten years, licensed full service commercial UHF stations have grown from 435 stations to 631, an increase of 45 per cent¹¹. Many rural communities served by translators still lack service from Fox, from the nearest PBS member, or from local independents, including new-network aligned stations. Also since 1981, TV translator technology has improved remarkably, solid state transmitters have become commonplace, and the prices of many key component have remained steady or even fallen. With no way to obtain authorizations, local translator clubs, operators and State and county agencies have been stymied in any plans for using these opportunities to deliver badly needed free TV service to rural America.

B. COMMISSION'S DTV IMPLEMENTATION, INCLUDING THE REALLOTMENT OF CHANNELS 60 - 69, WILL ENTAIL SIGNIFICANT ADDED DISRUPTION OF RURAL TV TRANSLATOR SERVICE.

In the Digital Television proceeding, the Commission has allotted a second channel for each eligible full service television station, and has begun a process of reducing the spectrum usable for television, initially to Channels 2 - 59, eventually to Channels 2 - 51. Concurrently, Channels 60 - 69 have been reallocated.¹² These decisions, which were arrived at over several years, and are the distillate of many important public

¹¹ FCC, "Television Channel Utilization," as of June 30, 1987; as of June 30, 1997.

¹² Reallocation of Television Channels 60-69, the 746-806 MHz Band, Report and Order in ET Dk. No. 97-157, FCC 97-421, released on January 6, 1998.

interest objectives, have at least four important by-products, so far as the retention and growth of rural TV translator services are affected.

- The DTV phase-in will occur in a manner that will occasion more than one staged output frequency move by many full service broadcasters. As secondary services, TV translators face an unsettled situation, with possible multiple displacements.
- Translators employ both an input channel for the distant station and an output channel for the local re-broadcast. The multiplication of stations and the environment of widespread full service TV channel changes both imply a future cacophony of changing channels.
- Spectrum recovery at Channels 60 - 69 disproportionately affects TV translators, which historically were encouraged by the FCC to concentrate their operations in the upper UHF bands.
- Channel changes and new channel usages, through the DTV proceeding, and the intensive re-use of the core channels from 2 through 51 create a "double bind" for secondary translators. Just when more and more moves are required to yield right-of-way, the alternative input and output replacement channels have become scarcer.

To date, the Commission's estimates of translator impact have been imprecise, but not reassuring. The FCC first published a "draft" Digital TV table of allotments in August, 1996.¹³

Consistently with the goal of full replication of eligible full service TV stations, computer runs were made to select a matched channel for each station defined as eligible. Because no planning factor was used that would steer allotments away from established TV translator service, the selection was made, in effect, as

¹³ Advanced Television Systems (referred to herein as the "DTV Proceeding"), Sixth Further Notice of Proposed Rule Making, FCC 96-317, 11 FCC Rcd 10968 (1996), 61 FR 43209, August 21, 1996.

though TV translators did not exist.

Initially the Commission estimated:

Based on the proposed DTV table, we estimate that about 55 to 65 per cent of existing LPTV operations and about 80 to 90 per cent of all TV translators would be able to continue to operate.

DTV Sixth Further Notice, 11 FCC Rcd 10968 (1996) ¶66. That estimate did not include the parallel spectrum reallocation plans. "We note, for example, that about 17 percent of all LPTV and TV translator stations would be affected by the recovery of channels 60-69." *Id.* These estimates would imply a combined total (from DTV and from 60-69 reallocation) of TV translator stations having to change facility or cease operation of 10 to 20 per cent, plus 17 percent, or up to¹⁴ 27 to 37 per cent of licensed translator stations.¹⁵ Using current station totals (fn. 4, *supra*), this could signify major change or extinguishment for some 1,300 to 1,800 TV translators.

Because TV translator input channels are not retained in the FCC engineering data base, a full impact analysis is not even possible at this time. The estimate also does not, and probably could not analyze TV translators arrayed in series along mountain

¹⁴ The staff noted that some facilities displaced in Channels 60 - 69 would have been displaced by new DTV allotments in that band anyway, *Id.* However, those channels were selected for DTV only as a last resort, and such facilities are few in number.

¹⁵ No investigation was made of how many facilities could be saved by displacement changes, as opposed to having to cease operation altogether. "Since we are not in a position to determine whether such changes are possible, we have not attempted to differentiate between these two impacts," *Id.* fn. 67.

ridges (daisy chains) where the loss of the first link from an urban area, with no viable substitute, disables the whole chain. By the time of adoption of the near-final table, with the DTV Sixth Report and Order, the impact estimates had not become much more exacting. "We estimate these changes will permit hundreds of LPTV and TV translators to continue providing service to their viewers."¹⁶

These developments persuaded Petitioner that displacement relief, and it alone, cannot satisfactorily address the rural TV problem. The DTV Reconsideration, *Id.*, ¶¶116-119, liberalized displacement relief in crucial respects, and these actions denote a serious effort of the Agency, at last, to fully incorporate the audience served by these stations in its plans. But in the tight spectrum environment that will prevail throughout the DTV transition, displacement will have diminishing returns, as stations take their new places with priority in time, first-come, first-served.

It remains to be seen whether worst case predictions of 1,500 to 1,800 translators moved or going dark will eventuate in practice. It does seem clear that displacement filings themselves will again slow down the authorization process, even below the

¹⁶ DTV Sixth Report and Order, 12 FCC Rcd. 14588, 62 FR 26684, May 14, 1997, ¶143. On reconsideration, and in response to a filings by the Community Broadcasters Association, the FCC found 66 instances where it could alter its plans, to mitigate impact on LPTV stations, DTV Reconsideration of 6th R&O, FCC 98-24, released on February 23, 1998, ¶107. This is a welcome development, but it does not alter the pattern of rural areas dropping further behind.

unsatisfactory levels obtaining today. Difficult technical channel fittings will entail terrain waivers and other ornate solutions, again requiring special handling.

The present proposal should be seen as a "safety valve" potentially mitigating these consequences, where other solutions cannot be found. In places where a one kilowatt or a 100 watt TV translator cannot move channels, a ten watt Fast-Track translator may fit within the spacings, and provide continued service. Or the audience for an established translator, having to go dark, may be partly or largely reachable by the introduction of two or three very small devices, at the power levels proposed, following a valley floor or other rural concentration of homes. For such relief to be meaningful, however, the "Track" indeed must be distinctively "Fast," so that rural residents may adapt quickly to conditions we know will be changing rapidly.

C. ALL NEW AND MAJOR CHANGE APPLICATIONS HAVE BEEN FROZEN

The Balanced Budget Act of 1997 revoked Commission authority to conduct lotteries, P.L. 105-33, revising 47 U.S.C. §309(i). Concurrently, the FCC's authority to employ competitive bidding, in broadcast as elsewhere, was expanded, see amended §309(j). In the wake of these major developments, the Commission has undertaken a complete revamping of its broadcast application processing.¹⁷ In conjunction with that step, the Agency imposed a

¹⁷ Implementation of Section 309(j) of the Communications Act, MM Dk. No. 97-234, Notice of Proposed Rule Making, FCC 97-397, released on November 26, 1997, 62 FR 65392 (December 12, 1997).

total freeze on the acceptance of "applications for construction permits for new stations or for major changes to existing facilities in any commercial broadcast or secondary broadcast service." Id. and Errata, rel. December 11, 1997.

This freeze was adopted without any discussion or analysis, and of course no separate explanation was given for the inclusion of "secondary" service such as TV translators. Rural translator applications rarely are contested, but the new freeze precludes their being filed, in the interest of designing new procedures for contested cases. The freeze removes any chance for a future filing window, for new or major change TV translator applications, until the proceeding has ended.

Petitioner believes that secondary service should be excepted from this freeze.¹⁸ But NTA devised the proposal here, so that it could be implemented independently of the ongoing MM Dk. 97-234. Just as the LPTV lottery system worked well for uncontested rural TV translators, an auction system, once implemented, also would be quite workable for rural translator operators, who rarely would find themselves needing to bid competitively. NTA's major concern is that the Section 309(j) proceeding is very complex, and the issues set forth in the proposal, Id., ¶¶59-81, may take a long time to sort out. The freeze while this is pending represents but

¹⁸ For example, it would fully safeguard the concerns in the auction proceeding, if filing windows were opened for translators and uncontested filings could be placed on a proposed grant list and granted. The window notice could specify that applications in conflict, with the conflict not resolved after ninety days, would be returned without consideration.

one more obstacle to new and change authorizations, that have been prevented or delayed for many years for other reasons.

We respectfully urge that the Commission move forward at this time, to propose a new Fast-Track authorization process for minimum power rural TV translators. Properly designed, this initiative will complement, rather than conflict with, whatever outcomes are appropriate in the Section 309(j) proceeding. Once the rules for processing are extant, with new auctions to resolve conflicts, rural TV translator operators can be expected to apply and receive authorizations under these rules, as would any other new service provider.

III. THE COMMISSION SHOULD INITIATE RULEMAKING, LOOKING TO THE FAST-TRACK AUTHORIZATION OF FAST-TRACK TV TRANSLATORS, AT LIMITED POWER, AND FURTHER LIMITED TO CLEARLY UNDERSERVED AREAS.

To address the accumulated, and growing service needs for TV translator service in rural America, NTA petitions for a rule making, looking to the creation of special procedures to expedite the licensing of very low transmitter power conventional TV translator facilities. The creation of such a procedures requires consideration of (a) a definition of rural areas that will insulate such service from the high-demand urban setting; (b) permissible service rules that are flexible enough to provide meaningful relief, yet restrictive enough to avoid a new "land rush" mentality; and (c) most important, an authorization process geared to overcoming the administrative barriers to prompt new authorizations.

This new filing option would stand alongside, and be complementary to the Commission's rules, affording displacement relief for stations faced with preclusion by new service, owing to the translators' secondary status. Displacement relief would continue to be available, under established rules. NTA wishes to acknowledge the hard work of the FCC staff, during the DTV proceeding, in devising liberalized power limits and other creative solutions for stations having to change channel or otherwise reconfigure their facilities. In our view, however, these palliatives do not address the backlog of unmet service needs in any way.

A. FAST-TRACK AUTHORIZATION SHOULD BE LIMITED TO PLACES RECEIVING THREE OR FEWER OVER THE AIR COMMERCIAL TV SERVICES.

An area eligible for filing must be identified where the urban conflicts and competitive pressures that were stimulated by the LPTV initiative generally are absent. Historically, since 1952, the Commission's "table of assignment" cases have sought to assure three-network commercial service as a minimum, to all communities in the United States. Today, with four full networks, two newer commercial networks and a national public TV presence, any community having only three commercial channels of over-the-air television is underserved.

Petitioner urges that eligibility for Fast-Track filing be strictly limited to those locations having three or fewer primary

commercial¹⁹ TV services, defined as Grade B service, or inside the Grade B but provably blocked from off-air reception by intervening terrain. Roughly speaking, this criterion excludes central cities and the surrounding areas, having direct reception of TV, in virtually all markets from 1 through 160, inclusive, and excludes additional areas in markets smaller than No. 160.

B. PERMISSIBLE SERVICE RULES FOR FAST-TRACK SHOULD STRIKE A BALANCE, AFFORDING MEANINGFUL RELIEF, BUT NOT ENCOURAGING MASS FILERS.

NTA recommends that applications be limited to transmitter output powers of one watt at VHF and ten watts at UHF. These were the initial limits for translators, respectively, in 1960 and 1956. Because of this, there is an established market for new and used micro devices within these limits, and decades of experience in engineering clean, non-interfering facilities at these levels. These values in practice are substantially comparable, and the differential between VHF and UHF also furthers the Commission's historic commitment to full UHF comparability.

Petitioner recognizes that the very low power limits proposed herein for Fast-Track authorization are not adequate for community coverage in many instances. We put forward these limits as a compromise, given the compressed spectrum environment, and the overriding need to stimulate new service without courting the

¹⁹ The exclusion of non-commercial services is consistent with the FCC's established policy of not including non-commercial services in any analysis required under 47 U.S.C. §307(b), including petitions for new commercial allotments and comparative analysis of competing applications specifying different proposed communities to be served.

abuses we have seen in the past. These power limits, combined with secondary status, also are calculated as way to make some modest progress in rural TV delivery, while assuring no disruption to the DTV rollout. This filing option may be especially attractive where spectrum congestion and other engineering factors preclude the use of displacement relief, and no one-to-one substitute for services being extinguished can be identified.

What we are describing is not a true "Micro-TV Service" as such service was eloquently described in the 1980 LPTV Staff Report.²⁰ Nor is it comparable to recent suggestions and proposals relating to "Micro Radio" or "Micro FM." NTA's view is that rural service needs have become pressing, and its first priority is to restore and enhance some conventional TV translator service. For this reason, we advocate that the new filings be subject to all translator rules, including the limitation on origination to no more than 30 seconds per hour, §74.731(f) of the Rules. The experience with extended FM service by satellite, using FM translators, often having no relation to established regional broadcast arrangements, also suggests that satellite-fed translators should not be allowed in this service category, at this time.

- C. AN AUTHORIZATION PROCESS SHOULD BE DEvised THAT EXPEDITES NEW SERVICE TO THE PUBLIC BY ALL REASONABLE MEANS.

As discussed many, if not most of the lost opportunities for

²⁰ Parry D. Teasdale, "A Micro-TV Service in the United States," Attachment C to the LPTV Staff Report.

new service since 1982 have stemmed from the Commission's unwieldy authorization process. Under the freeze and window system, even clean, uncontested rural TV translator applications (when these could be filed) have taken from 18 months to two years for processing. Such delays were frustrating in the past. With the advent of filing fees for commercial translator applicants, purportedly having a nexus with the FCC's cost burden for its processing, such delays also raise a question of basic fairness.

Section 319(a) of the Communications Act provides that no license for a facility shall issue, unless a permit for construction has been granted by the Commission. Section 319(d) exempts several categories of stations, and authorizes the Commission to exempt others, with a public interest finding. However, "With respect to any broadcasting station, the Commission shall not have any authority to waive the requirement of a permit for construction, except that the Commission may by regulation determine that a permit shall not be required for minor changes in the facilities of broadcast stations." 47 U.S.C. §319(d). With the convergence of types of service, and the impending auctions of spectrum without any use restriction, this clause has become an anachronism, and should be eliminated by Congress. Until that day, we operate within the law as it is given.²¹

²¹ The Commission has made extensive use of the "minor change" provision, notably for its recently strengthened displacement relief, and for the assignment of new full service DTV authorizations. NTA concluded that, desirable as this would be for a Fast-Track, it would not be in conformity with existing law.

NTA requests that the Commission propose a system, whereby an application for construction permit would be submitted, self-certifying under penalty of perjury to "exempt zone" eligibility and all other qualification criteria established by rule (A suggested model Self-Certification Checklist is submitted as Attachment A herewith.) The certification would include a statement that written notice had been given to all full service TV broadcast stations within a prescribed radius, on the co-channel and adjacent channel to the proposed facility. The application form would include a draft construction permit, bearing the Commission's seal (with a checked-block for the staff to include additional conditions as an attachment), and a signature block for the staff.

Applications would be noticed as filed in Broadcast Applications within 15 days of submittal. The public would have thirty days thereafter to submit petitions to deny or competing applications. If no petitions or competing applications were filed, and provided the application was complete, the submitted form construction permit would be signed by a staff person on delegated authority and the permit would be mailed to the applicant in all cases no later than 45 days after Public Notice of the filing.

Petitions to deny would not be accepted unless served on the applicant. Parties would be encouraged to resolve petition issues privately, through negotiation or mediation. As a practical matter, staff action on contested applications would receive a low